



DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED-2022-OESE-0006]

Proposed priorities, requirements, definitions, and selection criteria--Expanding Opportunity Through Quality Charter Schools Program (CSP)--Grants to State Entities (SE Grants); Grants to Charter Management Organizations for the Replication and Expansion of High-Quality Charter Schools (CMO Grants); and Grants to Charter School Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools (Developer Grants)

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Proposed priorities, requirements, definitions, and selection criteria.

SUMMARY: The Department of Education proposes priorities, requirements, definitions, and selection criteria for CSP SE Grants, CMO Grants, and Developer Grants, Assistance Listing Numbers (ALNs) 84.282A, 84.282B, 84.282E, and 84.282M. We may use one or more of these priorities, requirements, definitions, and selection criteria for grant competitions under these programs in fiscal year (FY) 2022 and later years. We take this action to create results-driven policies to help promote positive student outcomes,

student and staff diversity, educator and community empowerment, promising practices, and accountability, including fiscal transparency and responsibility, in charter schools supported with CSP funds, which can serve as models for other charter schools.

DATES: We must receive your comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- Federal eRulemaking Portal: Go to [www.regulations.gov](http://www.regulations.gov) to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Help."

- Postal Mail, Commercial Delivery, or Hand Delivery: If you mail or deliver your comments about these proposed priorities, requirements, definitions, and selection criteria, address them to Porscheoy Brice, U.S. Department of Education, 400 Maryland Avenue, SW, room 3E209,

Washington, DC 20202-5970.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Porscheoy Brice, U.S. Department of Education, 400 Maryland Avenue, SW, room 3E209, Washington, DC 20202-5970. Telephone: (202) 260-0968. Email: [charterschools@ed.gov](mailto:charterschools@ed.gov).

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding the proposed priorities, requirements, definitions, and selection criteria. To ensure that your comments have maximum effect in developing the notice of final priorities, requirements, definitions, and selection criteria, we urge you to clearly identify the specific section of the proposed priority, requirement, definition, or selection criteria that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden

that might result from these proposed priorities, requirements, definitions, and selection criteria. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed priorities, requirements, definitions, and selection criteria by accessing [Regulations.gov](https://www.regulations.gov). You may also inspect the comments in person. Please contact the person listed under FOR FURTHER INFORMATION CONTACT to make arrangements to inspect the comments in person.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priorities, requirements, definitions, and selection criteria. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Purpose of Programs: SE Grants, CMO Grants, and Developer Grants are three of six CSP grant programs that support various activities critical to the successful creation and implementation of charter schools. The major purposes of

the CSP are to expand opportunities for all students, particularly traditionally underserved students, to attend charter schools and meet challenging State academic standards; provide financial assistance for the planning, program design, and initial implementation of charter schools; increase the number of high-quality charter schools available to students across the United States; evaluate the impact of charter schools on student achievement, families, and communities; share best practices between charter schools and other public schools; aid States in providing facilities support to charter schools; and support efforts to strengthen the charter school authorizing process.

SE Grants (ALN 84.282A) comprise the largest portion of CSP funds. These competitive grants are awarded to State entities (SEs) that, in turn, award competitive subgrants to eligible applicants for the purpose of opening new charter schools and replicating and expanding high-quality charter schools. Eligible applicants are charter school developers that have applied to an authorized public chartering agency to operate a charter school and have provided adequate and timely notice to that authority. A developer is an individual or group of individuals (including a public or private nonprofit organization), which may include teachers, administrators and other school staff, parents, or other members of the local community in

which a charter school project will be carried out.<sup>1</sup> For-profit organizations are ineligible to apply for grants or subgrants under the CSP.

In addition to making subgrants to eligible applicants to open new charter schools and to replicate or expand high-quality charter schools, SE grantees may use grant funds to provide technical assistance to eligible applicants and authorized public chartering agencies in opening new charter schools and replicating and expanding high-quality charter schools; and work with authorized public chartering agencies in the State to improve authorizing quality, including developing capacity for, and conducting, fiscal oversight and auditing of charter schools. SE Grant funds may also be used for grant administration, which may include technical assistance and monitoring of subgrants for performance and fiscal and regulatory compliance, as required under 2 CFR 200.332(d).

If a State does not have an active CSP SE Grant, the Department may award Developer Grants (ALNs 84.282B and 84.282E) to eligible applicants in the State on a competitive basis to enable them to open new charter schools or to replicate or expand high-quality charter schools. Through CMO Grants (ALN 84.282M), the Department provides funds to non-profit charter management

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<sup>1</sup> Section 4310(5) and (6) of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 7221i(5) and (6)) ([www.congress.gov/114/plaws/publ95/PLAW-114publ95.pdf](http://www.congress.gov/114/plaws/publ95/PLAW-114publ95.pdf)).

organizations (CMOs) on a competitive basis to enable them to replicate or expand one or more high-quality charter schools.

CSP SE Grants, CMO Grants, and Developer Grants are intended to support charter schools that serve elementary or secondary school students. Funds also may be used to serve students in early childhood education programs or postsecondary students. Section 4310 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), defines "replicate" as opening a new charter school, or a new campus of a high-quality charter school, based on the educational model of an existing high-quality charter school; and "expand" as significantly increasing enrollment or adding one or more grades to a high-quality charter school (20 U.S.C. 7221i(9) and (7)). Section 4310 defines "high-quality charter school," in pertinent part, as a charter school that shows evidence of strong academic results, which may include strong student academic growth, as determined by a State; has no significant issues in the areas of student safety, financial and operational management, or statutory or regulatory compliance; and has demonstrated success in significantly increasing student academic achievement, including graduation rates where applicable, for all students served by the charter school and for each of the subgroups of students defined in section 1111(c)(2) of the ESEA (20 U.S.C. 7221i(8)).

For CMO Grants and Developer Grants, these proposed priorities, requirements, definitions, and selection criteria are intended to supplement the regulatory priorities, requirements, definitions, and selection criteria in: Final Priorities, Requirements, Definitions, and Selection Criteria—Expanding Opportunity Through Quality Charter Schools Program; Grants to Charter Management Organizations for the Replication and Expansion of High-Quality Charter Schools (CMO NFP), published in the *Federal Register* on November 30, 2018 (83 FR 61532), and Final Priorities, Requirements, Definitions, and Selection Criteria—Expanding Opportunity Through Quality Charter Schools Program; Grants to Charter School Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools (Developer NFP), published in the *Federal Register* on July 3, 2019 (84 FR 31726).

Program Authority: Title IV, part C of the ESEA (20 U.S.C. 7221-7221j).

PROPOSED PRIORITIES:

Proposed Priorities Applicable to CMO Grants and Developer Grants: We propose two priorities for CMO Grants and Developer Grants.

Proposed Priority 1--Promoting High-Quality Educator- and Community-Centered Charter Schools to Support Underserved Students.



## Background:

Charter schools were envisioned to drive the creation of innovative approaches to teaching and learning for all students while being held accountable for academic performance.<sup>2</sup> The original proponents of charter schools anticipated that charter schools would be shaped by educators and offer opportunities for developing and sharing new instructional methods and resources that address the needs of students and families in the community. While that is the case in some charter schools, in others, teachers, parents, and community leaders have expressed concerns about not being included as active participants in charter school decision-making.<sup>3</sup> Such concerns may be due, in part, to limited requirements for community engagement. According to the National Resource Center on Charter School Finance and Governance, “most laws require only peripheral participation, such as garnering parent support for the school during the application process or keeping parents informed of student performance. These participation requirements do not take full advantage of charter schools’ potential to draw on the knowledge and

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<sup>2</sup> Kahlenberg, Richard D. & Potter, Halley (2014). Restoring Shanker’s Vision for Charter Schools | American Federation of Teachers (aft.org) [www.aft.org/ae/winter2014-2015/kahlenberg\\_potter](http://www.aft.org/ae/winter2014-2015/kahlenberg_potter).

<sup>3</sup> Baker, Timberly L., Wise, Jillian, Kelley, Gwendolyn, and Skiba, Russell J. (2016). Identifying Barriers: Creating Solutions <https://files.eric.ed.gov/fulltext/EJ1124003.pdf>.

expertise of their parent community.”<sup>4</sup> Similarly, some charter schools may not fully engage other community members and organizations that are also well-positioned to help assess the educational aspirations and needs of students living in their neighborhoods and can offer important contributions to help improve the academic, financial, and organizational or operational performance of the school.<sup>5</sup> Charter schools and CMOs may have needs that community members and organizations can help meet, including, for example, specific teacher areas of expertise; facilities for activities such as arts, sports, or enrichment; or serving their students' well-being and readiness to learn. Similarly, community partnerships can expand options for courses that may not be available in a school, enhance independent study or skill development opportunities (e.g., career and technical education or work-based learning), and build sustainability of program offerings. Community partnerships can also assess the receptiveness of a community to a new charter school.

Educator- and community-centered charter schools can provide opportunities to meet the needs of all students,

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<sup>4</sup> National Resource Center on Charter School Finance & Governance. Enhancing Charter Schools Through Parent Involvement [https://charterschoolcenter.ed.gov/sites/default/files/files/field\\_publication\\_attachment/Enhancing\\_Charter\\_Schools-AmyBiehlHS.pdf](https://charterschoolcenter.ed.gov/sites/default/files/files/field_publication_attachment/Enhancing_Charter_Schools-AmyBiehlHS.pdf).

<sup>5</sup> National Charter School Resource Center (2021). How Charter Schools Can Leverage Community Assets through Partnerships [https://charterschoolcenter.ed.gov/sites/default/files/files/field\\_publication\\_attachment/How\\_Charter\\_Schools\\_Can\\_Leverage\\_Community\\_Assets\\_through\\_Partnerships.pdf](https://charterschoolcenter.ed.gov/sites/default/files/files/field_publication_attachment/How_Charter_Schools_Can_Leverage_Community_Assets_through_Partnerships.pdf).

particularly underserved students. Studies show that when teachers are engaged in educational decision-making and are given an opportunity to collaborate with administrators, it promotes a better learning environment for students that leads to increased student achievement and college and career readiness.<sup>6</sup> For example, charter schools can ensure meaningful input of educators by appointing multiple educators to their governing boards or purposefully developing instructional and operational models that proactively solicit and respond to educators' feedback. Additionally, community-centered charter schools are built on relationships that may enable them to be more transparent and collaborative in their design and practices, including proactively recruiting, enrolling, and retaining students of diverse backgrounds and abilities.<sup>7</sup> Community-centered charter schools may have established partnerships with local organizations and informal and formal processes to engage with and solicit input from local stakeholders on a regular basis.

Proposed Priority:

(a) Under this priority, an applicant must propose to open a new charter school, or replicate or expand a high-

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<sup>6</sup> Rimm-Kaufman, Sara and Sandilos, Lia (2010). Improving students' relationships with teachers (apa.org) [www.apa.org/education-career/k12/relationships](http://www.apa.org/education-career/k12/relationships).

<sup>7</sup> Safal Partners: Kern, Nora (2016). Intentionally Diverse Charter Schools: A Toolkit for Charter School Leaders [https://charterschoolcenter.ed.gov/sites/default/files/files/field\\_publication\\_attachment/NCSRC%20Intentionally%20Diverse%20Charter%20School%20Toolkit.pdf](https://charterschoolcenter.ed.gov/sites/default/files/files/field_publication_attachment/NCSRC%20Intentionally%20Diverse%20Charter%20School%20Toolkit.pdf).

quality charter school, that is developed and implemented--

(1) With meaningful and ongoing engagement with current and former educators, including current and former teachers,, including in founding the school, board governance, school-level decision-making related to curriculum and instruction, and day-to-day operations of the school; and

(2) Using a community-centered approach that includes an assessment of community assets, informs the development of the charter school, and includes the implementation of protocols and practices designed to ensure that the charter school will use and interact with community assets on an ongoing basis to create and maintain strong community ties.

(b) In its application, an applicant must provide a high-quality plan that demonstrates how its proposed project would meet the requirements in paragraph (a) of this priority, accompanied by a timetable with milestones.

Proposed Priority 2--Charter School and Traditional Public School or District Collaborations that Benefit Students and Families.

Background:

Research has shown that collaborations among charter schools and traditional public schools or traditional school districts (charter-traditional collaborations) have the potential to improve the quality of charter schools and

traditional public schools.<sup>8</sup> In order to benefit the public school system as a whole, and students and families in the community, charter-traditional collaborations require significant investments of time and resources to address commonly shared barriers and challenges in both charter schools and traditional public schools. Successful charter-traditional collaborations can lead to information-sharing about best practices for developing systems and processes that benefit all families and students served by the members of the collaboration.<sup>9</sup>

Some examples of charter-traditional collaborations that benefit students and families include: sharing curriculum resources and instructional materials, including opportunities for students to have increased access to a more comprehensive set of course offerings; creating systems and structures for the delivery of shared, effective teacher and leader professional development and instructional practices, including through professional learning communities; developing strong principal pipeline programs; and shared transportation systems that increase student access to and diversity within schools while lessening the financial burden all schools encounter when

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<sup>8</sup> Chait, Robin (2019). Bridging the Divide: Collaboration Between Traditional Public Schools and Charter Schools. [www.wested.org/wested-insights/collaboration-between-traditional-public-schools-and-charter-schools/](http://www.wested.org/wested-insights/collaboration-between-traditional-public-schools-and-charter-schools/).

<sup>9</sup> DeArmond, Michael, Cooley Nelson, Elizabeth, and Bruns, Angela (2015). The Best of Both Worlds: Can District-Charter Co-Location Be a Win-Win? <https://files.eric.ed.gov/fulltext/ED559807.pdf>.

providing transportation.<sup>10</sup>

Under the proposed priority, an applicant must propose to collaborate with at least one traditional public school or traditional school district in an activity that would be beneficial to all partners in the collaboration and lead to increased educational opportunities and improved student outcomes.

Proposed Priority:

(a) Under this priority, an applicant must propose to collaborate with at least one traditional public school or traditional school district in an activity that is designed to benefit students and families served by each member of the collaboration, designed to lead to increased educational opportunities and improved student outcomes, and includes implementation of--

(1) One or more of the following services and resources:

(i) Curricular and instructional resources or academic course offerings.

(ii) Professional development opportunities for teachers and leaders, which may include professional learning communities, opportunities for teachers to earn additional certifications, such as in a high need area or

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<sup>10</sup> Yatsko, Sarah, Cooley Nelson, Elizabeth, and Lake, Robin (2013). District-Charter Collaboration Compact: Interim Report. <https://crpe.org/district-charter-collaboration-compact-interim-report/>.

National Board Certification, and partnerships with educator preparation programs to support teaching residencies.

(iii) Evidence-based (as defined in section 8101(21) of the ESEA) practices to improve academic performance for underserved students.

(iv) Policies and practices to create safe, supportive, and inclusive learning environments, including systems of positive behavioral intervention and support; and

(2) One or more of the following initiatives:

(i) Transparent enrollment and retention practices and processes that include clear and consistent disclosure of policies or requirements (e.g., discipline policies, purchasing and wearing specific uniforms and other fees, or caregiver participation), and any services that are or are not provided, that could impact a family's ability to enroll or remain enrolled (e.g., transportation services or participation in the National School Lunch Program).

(ii) A shared transportation plan and system that reduces transportation costs for partners in the collaboration and takes into consideration various transportation options, including public transportation and district-provided or shared transportation options, cost-sharing or free or reduced-cost fare options, and any distance considerations for prioritized bus services.

(iii) Other collaborations designed to address a significant barrier or challenge faced by both charter schools and traditional public schools and improve student outcomes.

(b) In its application, an applicant must provide a letter from each partnering traditional public school or school district demonstrating a commitment to participate in the proposed charter-traditional collaboration. Within 45 days of receiving a grant award, the applicant must submit to the Department a written agreement (e.g., Memorandum of Understanding), signed by officials authorized to sign on behalf of the charter school and each partnering traditional public school or school district, that--

(1) Identifies and describes each member of the collaboration;

(2) States the purpose and duration of the collaboration;

(3) Describes the roles and responsibilities of each member of the collaboration, including key staff responsible for completing specific tasks;

(4) Describes how the collaboration will benefit each member, including how it will benefit students and families affiliated with each member and lead to increased educational opportunities and improved student outcomes, and specific and measurable, if applicable, goals;



(5) Describes the resources each member of the collaboration will contribute; and

(6) Contains any other relevant information.

#### Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the *Federal Register*. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

#### PROPOSED APPLICATION REQUIREMENTS:

##### Background:

The ESEA requires SE Grant, CMO Grant, and Developer Grant applications to include specific information. In particular, SE Grant applications must address the application requirements in section 4303(f) of the ESEA, CMO Grant applications must address the application requirements in section 4305(b)(3) of the ESEA, and Developer Grant applications must address relevant application requirements in section 4303(f) of the ESEA. In addition to these statutory application requirements, we established additional application requirements for CMO Grants and Developer Grants in the CMO NFP and Developer NFP, respectively.

As a supplement to the application requirements in the ESEA, CMO NFP, and Developer NFP, the Department proposes new application requirements and assurances to help ensure the creation of new charter schools, and the replication and expansion of high-quality charter schools, that are:

- (1) racially and socio-economically diverse; (2) driven by the needs of students and families in the community in which the charter school is or will be located; and
- (3) fiscally responsible and transparent, particularly with respect to contractual relationships with for-profit management organizations (also referred to as education management organizations (EMOs)).

We reiterate that a charter school is, by definition, "a public school that . . . is operated under public supervision and direction," and

for-profit entities are ineligible to receive funding as a CSP project grantee or subgrantee (see section 4310(2)(B), (3), (4), and (5) of the ESEA). It is also a violation of CSP requirements for a grantee or subgrantee to relinquish full or substantial control of the charter school (and, thereby, the CSP project) to a for-profit management organization or other for-profit entity because, among other things, a grantee or subgrantee receiving CSP funds must establish and maintain proper internal controls and directly administer or supervise the administration of the project. See 2 CFR 200.302-303; and 34 CFR 75.701 and 76.701. A grantee or subgrantee that enters into a contract for goods or services must comply with the Federal procurement standards at 2 CFR 200.317-200.327, and applicable conflict of interest requirements, including that no employee, officer, or agent of the charter school may participate in the selection, award, or administration of a contract supported by Federal funds if he or she has a real or apparent conflict of interest.

Generally, the Department believes, based on experience administering the CSP, that the proposed application requirements and assurances would help facilitate the proper review and evaluation of CSP grant applications, thereby increasing the likelihood of successful grant and subgrant implementation. These proposed requirements and assurances would also help ensure

that all students have access to high-quality, diverse, and equitable learning opportunities in their communities, which should be a goal of all public schools.

High-performing charter school authorizers generally require applicants for a charter (i.e., to create a charter school) to present data on the academic achievement, demographics, and enrollment and retention rates of students in all surrounding public schools. These data help with assessing the extent to which the proposed charter school will meet the needs of, and enroll students that are representative of, the students in the community. Consistent with this part of the charter application process, we propose to require applicants for CMO Grants, Developer Grants, and subgrants under the SE Grant program to conduct a community impact analysis to inform the need, number, and types of charter schools to be created in a given community. The community impact analysis must describe how the plan for the proposed charter school takes into account the student demographics of the schools from which students are, or would be, drawn to attend the charter school. The community impact analysis must also describe the steps the charter school has taken or will take to ensure that the proposed charter school would not hamper, delay, or in any manner negatively affect any desegregation efforts in the public school districts from which students are, or would be, drawn or in which the

charter school is or would be located, including efforts to comply with a court order, statutory obligation, or voluntary efforts to create and maintain desegregated public schools, and that it would not otherwise increase racial or socio-economic segregation or isolation in the schools from which the students are, or would be, drawn to attend the charter school. The focus of the community impact analysis on racial and socio-economic diversity builds on existing statutory and regulatory provisions that give priority to applicants that plan to operate or manage high-quality charter schools with racially and socio-economically diverse student bodies (see section 4305(b)(5)(A) of the ESEA; CMO NFP at 61542; and Developer NFP at 31734). Please note that an applicant that proposes to operate or manage a charter school in a racially or socio-economically segregated or isolated community still would be eligible to apply for funding, even if the student body of the charter school would be racially or socio-economically segregated or isolated due to community demographics. Such an applicant, like all other applicants, would be required to provide a community impact analysis describing how the plan for the proposed charter school takes into account the student demographics of the schools from which students are, or would be, drawn to attend the charter school, and the steps the applicant has taken or will take to ensure that the proposed charter

school would not increase racial or socio-economic segregation or isolation in those schools.

Further, as autonomous public schools that create their operational, curricular, and policy procedures, charter schools are well positioned to draw on the knowledge and expertise of families and other stakeholders in the community to help shape school practices. As with Proposed Priority 1, the proposed community impact analysis requirements are designed to ensure that families play an active role in informing decision-making regarding the need for charter schools in a specific community and to strengthen requirements regarding how the community is engaged and integrated in the charter school planning and approval process.

Under section 4310(2)(B) of the ESEA, charter schools receiving CSP funds must be created by a developer as a public school or adapted by a developer from an existing public school and operated under public supervision and direction. While for-profit organizations are ineligible to apply for direct grants or subgrants under the CSP, some charter schools enter into contracts with for-profit EMOs for services. It is the responsibility of the grantee or subgrantee to ensure that such an agreement with an EMO is a contract, and not a subaward or subgrant, in accordance with 2 CFR 200.331. Arrangements under which a for-profit EMO, including a non-profit CMO operated by or on behalf of

a for-profit entity, exercises full or substantial administrative control over the charter school (and, thereby, the CSP project) or over programmatic decisions are not permissible under CSP-funded projects, pursuant to 34 CFR 75.701 and 76.701, which require grantees and subgrantees, respectively, to directly administer or supervise the administration of their projects. EMOs provide a variety of services to charter schools—from limited management and financial support services to whole-school package offerings. Some examples of impermissible delegations of administrative control include situations in which the EMO controls all or a substantial portion of grant or subgrant funds and expenditures, including making programmatic decisions (also referred to as “sweeps contracts”); the EMO employs the school principal and a large proportion of the teachers; or the EMO makes decisions about curricula and instructional practices.

We propose application requirements designed to ensure that any charter school that receives CSP funds and enters, or plans to enter, into a contract with an EMO complies with all statutory and regulatory requirements, including applicable Federal procurement and conflict of interest standards in 2 CFR 200.317–200.327, and Federal regulations requiring grantees and subgrantees to establish and maintain effective internal and administrative control over the Federal award (2 CFR 200.303; and 34 CFR 75.701 and

76.701). The proposed application requirements also are designed to ensure fiscal transparency surrounding these contracts by requiring applicants to address whether they have entered or plan to enter into a contract with a for-profit management organization and, if so, to provide detailed information regarding the terms of the contract. This includes the amount of any CSP funding that would be used to pay for services under the contract and information about the governing board members, individuals who have a financial interest in the management organization, and any perceived or actual conflicts of interests. Applicants would also address how the applicant will ensure that it makes all programmatic decisions, maintains control over all program funds, directly administers or supervises the administration of the grant or subgrant in accordance with 34 CFR 75.701 and 76.701, and complies with the conflict of interest standards in 2 CFR 200.317-200.327.

Under section 4310(6) of the ESEA, an eligible applicant is defined as a charter school developer that has (1) applied to an authorized public chartering agency to operate a charter school and (2) provided adequate and timely notice to that authority. As noted above, eligible applicants in States that do not have an active SE Grant may apply to the Department for a direct grant under the Developer Grant program. Non-profit CMOs are the only eligible entities under the CMO Grant program and usually



serve as the developer and apply for the charter on behalf of the charter schools that they fund through their grant. Because an applicant need not have received a charter to be eligible to apply for a CSP grant, there is inherent risk of an applicant receiving a CSP grant but ultimately not having its charter application approved. Given this risk, we propose requirements to better inform the Department of these situations, including by providing the expected timeline from the authorized public chartering agency to provide a final decision on the charter application and identifying any planning costs expected to be incurred before such decision. This information can, in turn, be used by the Department to establish guardrails, such as through grant conditions, to minimize risk.

Finally, to reinforce the proposed application requirements, we also propose assurances related to charter schools' contracts with EMOs; subgrant awards; reporting requirements; racial and socio-economic diversity of students and teachers in the charter school, and the impact of the charter school on racial and socio-economic diversity in the public school district and schools from which students are, or will be, drawn to attend the charter school; and ensuring that CSP funding for implementation of a charter school is provided only when a charter has been approved and a school facility has been secured.

We propose to apply one or more of the following

application requirements in any year in which a competition is held under one or more of the following CSP grant programs: SE Grants, CMO Grants, or Developer Grants. We identify the program applicability for each proposed application requirement.

Proposed Requirements Applicable to CMO Grants and Developer Grants.

Proposed Requirement 1 for CMO Grants and Developer Grants:

Each applicant must provide a community impact analysis that demonstrates that there is sufficient demand for the proposed project and that the proposed project would serve the interests and meet the needs of students and families in the community or communities from which students are, or will be, drawn to attend the charter school, and that includes the following:

(a) Descriptions of the community support and unmet demand for the charter school, including any over-enrollment of existing public schools or other information that demonstrates demand for the charter school, such as evidence of demand for specialized instructional approaches

(b) Descriptions of the targeted student and staff demographics and how the applicant plans to establish and maintain racially and socio-economically diverse student and staff populations, including proposed strategies (that are consistent with applicable legal requirements) to

recruit, enroll, and retain a diverse student body and to recruit, hire, develop, and retain a diverse staff and talent pipeline at all levels (including leadership positions).

(c) Analyses of publicly available information and data, including citations and sources, on academic achievement, demographics, and enrollment trends of students in the public schools and school districts from which students are, or will be, drawn to attend the charter school, and an explanation of how the area from which the proposed charter school would reasonably expect to draw students was determined.

(d) An analysis of the proposed charter school's demographic projections and a comparison of such projections with the demographics of public schools and school districts from which students are, or will be, drawn to attend the charter school.

(e) Evidence that demonstrates that the number of charter schools proposed to be opened, replicated, or expanded under the grant does not exceed the number of public schools needed to accommodate the demand in the community, including projected enrollment for the charter schools based on analysis of community needs and unmet demand and any supporting documents for the methodology and calculations used to determine the number of schools proposed to be opened, replicated, or expanded.

(f) A robust family and community engagement plan designed to ensure the active participation of families and the community and that includes the following:

(1) How families and the community are or were engaged in determining the vision and design for the charter school, including specific examples of how families' and the community's input was, or is expected to be, incorporated into the vision and design for the charter school.

(2) How the charter school will meaningfully engage with both families and the community to create strong and ongoing partnerships.

(3) How the charter school will foster a collaborative culture that involves the families of all students, including underserved students, in school decision-making on an ongoing basis.

(4) How the charter school's enrollment and recruitment process will engage and accommodate families from various backgrounds, including by holding enrollment and recruitment events on weekends or during non-standard work hours, making translators available, and providing enrollment and recruitment information in widely accessible formats (e.g., hard copy and online in multiple languages, large print or braille for visually-impaired individuals) through widely available and transparent means (e.g.,

online and at community locations).<sup>11</sup>

(5) How the charter school has engaged or will engage families and the community to develop an instructional model that will serve the targeted diverse student population and their families effectively.

(g) How the plans for the operation of the charter school will support and reflect the needs of students and families in the community, including considerations for how the school's location, or anticipated location if a facility has not been secured, will facilitate access for the targeted diverse student population (e.g., access to public transportation or other transportation options, the demographics of neighborhoods within walking distance of the school, and transportation plans and costs for students who are not able to walk or use public transportation to access the school).

(h) A description of the steps the applicant has taken or will take to ensure that the proposed charter school would not hamper, delay, or in any manner negatively affect any desegregation efforts in the public school districts from which students are, or would be, drawn to attend the charter school, including efforts to comply with a court order, statutory obligation, or voluntary efforts

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<sup>11</sup> Please note that all public schools are obligated under Federal civil rights laws to ensure meaningful communication with limited English proficient parents and effective communication with individuals with disabilities. 28 CFR 35.160. See generally *Lau v. Nichols*, 414 U.S. 563 (1974); 34 CFR part 100.

to create and maintain desegregated public schools, and that it would not otherwise increase racial or socioeconomic segregation or isolation in the schools from which the students are, or would be, drawn to attend the charter school.

Proposed Requirement 2 for CMO Grants and Developer Grants:

For any existing or proposed contract with a for-profit management organization (including a non-profit management organization operated by or on behalf of a for-profit entity), without regard to whether the management organization exercises full or substantial administrative control over the charter school or the CSP project, the applicant must include--

(a) The name and contact information of the management organization;

(b) A detailed description of the terms of the contract, including the cost (i.e., fixed costs and estimates of any ongoing costs or fees) and percentage such cost represents of the school's total funding, amount of CSP funds proposed to be used towards such cost (with an explanation of why such cost is reasonable), duration, roles and responsibilities of the management organization, and steps the applicant will take to ensure that it pays fair market value for any services or other items purchased or leased from the management organization, makes all

programmatic decisions, maintains control over all CSP funds, and directly administers or supervises the administration of the grant in accordance with 34 CFR 75.701;

(c) A description of any business or financial relationship between the charter school developer and the management organization, including payments, contract terms, and any property owned, operated, or controlled by the management organization or related individuals or entities that will be used by the charter school;

(d) The name and contact information for each member of the governing board of the proposed charter school;

(e) A list of all individuals who have a financial interest in the management organization, including--

(1) Descriptions of any affiliations or conflicts of interest for charter school staff, board members, and management organization staff;

(2) A list of all related individuals or entities providing contractual services to the charter school and the nature of those services; and

(3) Detailed descriptions of any actual or perceived conflicts of interest, the steps the applicant took or will take to avoid any actual or perceived conflicts of interest, and how the applicant resolved or will resolve any actual or perceived conflicts of interest to ensure compliance with 2 CFR 200.318(c);

(f) An explanation of how the applicant will ensure that the management contract is severable, severing the management contract will not cause the proposed charter school to close, the duration of the management contract will not extend beyond the expiration date of the school's charter, and renewal of the management contract will not occur without approval and affirmative action by the governing board of the charter school; and

(g) A description of the steps the applicant will take to ensure that it maintains control over all student records and has a process in place to provide those records to another public school or school district in a timely manner upon the transfer of a student from the charter school to another public school, including due to closure of the charter school, in accordance with section 4308 of the ESEA.

Proposed Requirement 3 for CMO Grants and Developer Grants:

An applicant that has applied to an authorized public chartering agency to operate a new, expanded, or replicated charter school, and has not yet received approval, must provide--

(a) A signed and dated copy of its application to the authorized public chartering agency;

(b) Documentation that it has provided notice to the authorized public chartering agency that it has applied for



a CSP grant;

(c) A timeline from the authorized public chartering agency for providing a final decision on the charter application; and

(d) Any planning costs in its proposed budget that are expected to be incurred prior to the date the authorized public chartering agency expects to issue a decision on the applicant's charter application.

Proposed Requirements Applicable to SE Grants:

Background:

Applicants for subgrants under the CSP SE Grant program are required to provide, as part of their subgrant application, a description of the roles and responsibilities of eligible applicants, partner organizations, and CMOs, including the administrative and contractual roles and responsibilities of such partners (section 4303(f)(1)(C)(i)(II) of the ESEA). Another goal of these proposed requirements is to ensure that CSP SE grantees are well positioned to oversee a high-quality peer review process as they make subgrant awards in their respective States to support opening new charter schools and replicating and expanding high-quality charter schools. Also, we want to ensure that, after making subgrant awards in their States, SE grantees fulfill their responsibility to monitor charter school subgrant award recipients, as required under 2 CFR 200.332(d). SEs are required to

provide descriptions of how the SE will review applications from eligible applicants (section 4303(f)(1)(C)(ii) of the ESEA) as well as its plan to adequately monitor subgrant recipients under the SE's program (section 4303(g)(1)(D)(i) of the ESEA). The CSP SE Grant program supports many charter schools nationally, and the proposed new requirements for SE applicants to create subgrant application review and subgrantee monitoring plans present an opportunity for peer reviewers to evaluate the quality of these plans not only to inform funding decisions, but also to enhance the quality of charter schools in the areas of transparency, oversight, and accountability.

The proposed application requirements, which would supplement existing statutory requirements for SEs, would: require subgrant applicants to provide a community impact analysis and submit more detailed information regarding the nature of any management contracts with for-profit EMOs, including non-profit CMOs operated by or on behalf of for-profit entities, as we are proposing to require of applicants for CMO Grants and Developer Grants; require SEs to give priority in making subgrants to charter schools that are educator-led and community-centered or that participate in collaborations among charter schools and traditional public schools or school districts (charter-traditional-district collaborations), as with the above priorities for CMO and Developer; require SEs to provide

justification and supporting evidence for the planned number of subgrants and subgrant award amounts to ensure proposed projects are reasonable; and, as discussed in the previous paragraph, strengthen the requirements related to SEs' review of subgrant applications and monitoring of subgrants in their States.

Proposed Requirement 1 for SE Grants:

Each subgrant applicant must provide a community impact analysis that demonstrates that there is sufficient demand for the proposed project and that the proposed project would serve the interests and meet the needs of students and families in the community or communities from which the students are, or will be, drawn to attend the charter school, and that includes the following:

(a) Descriptions of the community support and unmet demand for the charter school, including any over-enrollment of existing public schools or other information that demonstrates demand for the charter school, such as evidence of demand for specialized instructional approaches.

(b) Descriptions of the targeted student and staff demographics and how the applicant plans to establish and maintain racially and socio-economically diverse student and staff populations, including proposed strategies (consistent with applicable legal requirements) to recruit, enroll, and retain a diverse student body and to recruit,

hire, develop, and retain a diverse staff and talent pipeline at all levels (including leadership positions).

(c) Analyses of publicly available information and data on student academic achievement, demographics, and enrollment trends of students in schools in the public school district and schools from which students are, or will be, drawn or in which the charter school is or will be located, including citations and sources and an explanation of how the area from which the proposed charter school would reasonably expect to draw students was determined.

(d) An analysis of the proposed charter school's demographic projections and a comparison of such projections with the demographics of public schools and school districts from which students are, or will be, drawn to attend the charter school.

(e) Evidence that demonstrates that the number of charter schools proposed to be opened, replicated, or expanded under the grant does not exceed the number of public schools needed to accommodate the demand in the community, including projected enrollment for the charter schools based on analysis of community needs and unmet demand and any supporting documents for the methodology and calculations used to determine the number of schools proposed to be opened, replicated, or expanded.

(f) A robust family and community engagement plan designed to ensure the active participation of families and

the community that includes the following:

(1) How families and the community are or were engaged in determining the vision and design for the charter school, including specific examples of how families' and the community's input was, or is expected to be, incorporated into the vision and design for the charter school.

(2) How the charter school will meaningfully engage with both families and the community to create strong and ongoing partnerships.

(3) How the charter school will foster a collaborative culture that involves the families of all students, including underserved students, in school decision-making on an ongoing basis.

(4) How the charter school's enrollment and recruitment processes will engage and accommodate families from various backgrounds, including by holding enrollment and recruitment events on weekends or non-standard work hours, making translators available, and providing enrollment and recruitment information in widely accessible formats (e.g., hard copy and online in multiple languages, large print or braille for visually-impaired individuals) through widely available and transparent means (e.g., online and at community locations).<sup>12</sup>

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<sup>12</sup> Please note that all public schools are obligated under Federal civil

(5) How the charter school has engaged or will engage families and the community to develop an instructional model to best serve the targeted diverse student population and their families.

(g) How the plans for the operation of the charter school will support and reflect the needs of students and families in the community, including considerations for how the school's location, or anticipated location if a facility has not been secured, will facilitate access for the targeted diverse student population (e.g., access to public transportation or other transportation options, the demographics of neighborhoods within walking distance of the school, and transportation plans and costs for students who are not able to walk or use public transportation to access the school).

(h) A description of the steps the applicant has taken or will take to ensure that the proposed charter school would not hamper, delay, or in any manner negatively affect any desegregation efforts in the public school districts from which students are, or would be, drawn to attend the charter school, including efforts to comply with a court order, statutory obligation, or voluntary efforts to create and maintain desegregated public schools, and

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rights laws to ensure meaningful communication with limited English proficient parents and effective communication with individuals with disabilities. 28 CFR 35.160. See generally *Lau v. Nichols*, 414 U.S. 563 (1974); 34 CFR part 100.

that it would not otherwise increase racial or socio-economic segregation or isolation in the schools from which the students are, or would be, drawn to attend the charter school.

Proposed Requirement 2 for SE Grants:

For any existing or proposed contract with a for-profit management organization (including a non-profit management organization operated by or on behalf of a for-profit entity), without regard to whether the management organization exercises full or substantial administrative control over the charter school or the CSP project, the subgrant applicant must include--

(a) The name and contact information of the management organization;

(b) A detailed description of the terms of the contract, including the cost (i.e., fixed costs and estimates of any ongoing costs or fees) and percentage such cost represents of the school's total funding, amount of CSP funds proposed to be used towards such cost (with an explanation of why such cost is reasonable), duration, roles and responsibilities of the management organization, and steps the applicant will take to ensure that it pays fair market value for any services or other items purchased or leased from the management organization, makes all programmatic decisions, maintains control over all CSP funds, and directly administers or supervises the

administration of the subgrant in accordance with 34 CFR 76.701;

(c) A description of any business or financial relationship between the charter school developer and the management organization, including payments, contract terms, and any property owned, operated, or controlled by the management organization or related individuals or entities to be used by the charter school;

(d) The name and contact information for each member of the governing board of the proposed charter school;

(e) A list of all individuals who have a financial interest in the management organization, including—

(1) Descriptions of any affiliations or conflicts of interest for charter school staff, board members, and management organization staff;

(2) A list of all related individuals or entities providing contractual services to the charter school and the nature of those services; and

(3) Detailed descriptions of any actual or perceived conflicts of interest, the steps the applicant took or will take to avoid any actual or perceived conflicts of interest, and how the applicant resolved or will resolve any actual or perceived conflicts of interest to ensure compliance with 2 CFR 200.318(c);

(f) An explanation of how the applicant will ensure that the management contract is severable, severing the



management contract will not cause the proposed charter school to close, the duration of the management contract will not extend beyond the expiration date of the school's charter, and renewal of the management contract will not occur without approval and affirmative action by the governing board of the charter school; and

(g) A description of the steps the applicant will take to ensure that it maintains control over all student records and has a process in place to provide those records to another public school or school district in a timely manner upon the transfer of a student from the charter school to another public school in accordance with section 4308 of the ESEA.

Proposed Requirement 3 for SE Grants:

Each SE applicant must provide a detailed description of how it will review applications from eligible applicants, including--

(a) How eligibility will be determined;

(b) How peer reviewers will be recruited and selected, including efforts the applicant will make to recruit peer reviewers from diverse backgrounds and underrepresented groups;

(c) How subgrant applications will be reviewed and evaluated;

(d) How cost analyses and budget reviews will be conducted to ensure that costs are necessary, reasonable,

and allocable to the subgrant;

(e) How applicants will be assessed for risk (i.e., fiscal, programmatic, compliance); and

(f) How funding decisions will be made.

Proposed Requirement 4 for SE Grants:

Each SE applicant must provide a detailed description, including a timeline, of how the SE will monitor and report on subgrant performance in accordance with 2 CFR 200.329, and address and mitigate subgrantee risk, including--

(a) How subgrantees will be selected for in-depth monitoring, including factors that indicate higher risk (e.g., charter schools that have management contracts with for-profit EMOs, virtual charter schools, and charter schools with a history of poor performance);

(b) How identified subgrantee risk will be addressed;

(c) How subgrantee expenditures will be monitored;

(d) How monitoring for progress and compliance will be conducted and who will conduct the monitoring;

(e) How monitors will be trained;

(f) How monitoring findings will be shared with subgrantees;

(g) How corrective action plans will be used to resolve monitoring findings; and

(h) How the SE will ensure transparency so that monitoring findings and corrective action plans are available to families and the public.

Proposed Requirement 5 for SE Grants:

Each SE applicant must provide explanations and supporting documents for the methodology and calculations used to determine the number of proposed subgrant awards and the average subgrant award amount.

Proposed Requirement 6 for SE Grants:

Each SE applicant must describe how the SE will give priority in awarding subgrants to eligible applicants that propose projects that include one or more of the following:

(a) A community-centered approach that informs the planning, design, and implementation of the charter school and includes--

(1) An assessment of community assets;

(2) Meaningful and ongoing engagement with families, educators, and other members of the community, including in areas related to board governance and school-level decision-making related to curriculum and instruction; and

(3) The implementation of protocols and practices designed to ensure that the charter school will use and interact with community assets on an ongoing basis to create and maintain strong community ties.

(b) A collaboration with at least one traditional public school or school district in an activity that is designed to benefit students and families served by each member of the collaboration, designed to lead to increased educational opportunities and improved student outcomes,

and includes implementation of--

(1) One or more of the following services and resources:

(i) Curricular and instructional resources or academic course offerings.

(ii) Professional development opportunities for teachers and leaders, which may include professional learning communities, opportunities for teachers to earn additional certifications, such as in a high need area or National Board Certification, and partnerships with educator preparation programs to support teaching residencies.

(iii) Evidence-based (as defined in section 8101 of the ESEA) practices to improve academic performance for underserved students.

(iv) Policies and practices to create safe, supportive, and inclusive learning environments, including systems of positive behavioral intervention and support; and

(2) One or more of the following initiatives:

(i) Common enrollment and retention practices that include, as part of the enrollment process, disclosure of policies or requirements (e.g., discipline policies, purchasing and wearing specific uniforms and other fees, or caregiver participation), and any services that are or are not provided, that could impact a family's ability to

enroll or remain enrolled (e.g., transportation services or participation in the National School Lunch Program).

(ii) A shared transportation plan and system that reduces transportation costs for partners in the collaboration and takes into consideration various transportation options, including public transportation and district-provided or shared transportation options, cost-sharing or free or reduced-cost fare options, and any distance considerations for prioritized bus services.

(iii) Other collaborations designed to address a significant barrier or challenge faced by both charter schools and traditional public schools and improve student outcomes.

#### PROPOSED ASSURANCES:

##### Background:

The ESEA requires CSP SE Grant, CMO Grant, and Developer Grant applications to include applicable assurances from section 4303(f)(2) of the ESEA. In addition, CMO Grant applications must include the assurance required under section 4305(b)(3)(C) of the ESEA.

As discussed in the background for the Proposed Application Requirements section, for-profit EMOs are ineligible to apply for direct grants or subgrants under the CSP. The Department is aware, however, that some charter schools enter into contracts with EMOs. Under these circumstances, it is the responsibility of the

grantee or subgrantee to ensure that an agreement with an EMO is a contract, and not a subaward or subgrant as per 2 CFR 200.331. In addition, a contract for goods or services with a for-profit entity must comply with the Federal procurement standards at 2 CFR 200.317-327, and applicable conflict of interest requirements, including that no employee, officer, or agent of the charter school may participate in the selection, award, or administration of any contract supported by Federal funds if a real or apparent conflict of interest exists. EMOs provide a variety of services to charter schools--from supplemental management and financial support services to whole-school package offerings. Under these management contracts between charter schools and EMOs, the EMO often exercises full administrative control over the charter school project, which, as noted above, violates CSP requirements. Examples of impermissible delegations of administrative control include situations where the EMO controls all or a substantial portion of subgrant funds and expenditures, including making programmatic decisions (also referred to as "sweeps contracts"); the EMO employs the school principal and a large proportion of the teachers; or the EMO makes decisions about curricula and instructional practices. Such arrangements under which a for-profit EMO, including a non-profit management organization operated by or on behalf of a for-profit entity, exercises full

administrative control over the charter school (and, thereby, the CSP project) are not permissible under CSP-funded projects, pursuant to 34 CFR 75.701 and 76.701, which require that the grantee or subgrantee directly administer or supervise the administration of the project; and 2 CFR 200.303, which requires that the grantee or subgrantee establish and maintain proper internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the grant. See also 2 CFR 200.302 (financial management).

Consistent with the proposed application requirements for CMO Grants and Developer Grants, and for subgrants under the SE Grant program, we propose assurances to ensure that any charter school that receives CSP funds and enters, or plans to enter, into a contract with an EMO, including a non-profit CMO operated by or on behalf of a for-profit entity, complies with all relevant statutory and regulatory requirements, including applicable Federal procurement standards in 2 CFR 200.317-327, Federal regulations governing conflicts of interest, and Department regulations requiring grantees and subgrantees to directly administer or supervise the administration of the project and retain control over programmatic decisions. The proposed assurances also are designed to ensure transparency,

including fiscal transparency, surrounding these contracts.

In addition, CSP applicants (including CSP SE subgrant applicants) may receive CSP funds for planning a charter school before receiving an approved charter or securing a facility—factors that may prevent a charter school from ever opening. Accordingly, we are also proposing assurances to provide greater public transparency with CSP funding decisions and to address the risk of CSP implementation funds supporting grantees and subgrantees that are unable to open the charter school or secure a facility for the charter school in a timely manner.

Also, we are proposing an assurance relating to transparency in admission and enrollment policies, such as requirements for uniforms, volunteer hours, fees, or other obligations, that may create barriers that impact a family's ability to enroll or remain enrolled in the charter school. This assurance is designed to ensure that families are aware of financial and other obligations prior to enrolling in the charter school.

Proposed Assurances Applicable to SE Grants, CMO Grants, and Developer Grants:

(a) Each charter school receiving CSP funding must provide an assurance that it has not and will not enter into a contract with a for-profit management organization, including a non-profit management organization operated by or on behalf of a for-profit entity, under which the



management organization exercises full or substantial administrative control over the charter school and, thereby, the CSP project.

(b) Each charter school receiving CSP funding must provide an assurance that any management contract between the charter school and a for-profit management organization, including a non-profit CMO operated by or on behalf of a for-profit entity, guarantees or will guarantee that--

(1) The charter school maintains control over all CSP funds, makes all programmatic decisions, and directly administers or supervises the administration of the grant or subgrant;

(2) The management organization does not exercise full or substantial administrative control over the charter school (and, thereby, the CSP project), except that this does not limit the ability of a charter school to enter into a contract with a management organization for the provision of services that do not constitute full or substantial control of the charter school project funded under the CSP (e.g., food services or payroll services) and that otherwise comply with statutory and regulatory requirements;

(3) The charter school's governing board has access to financial and other data pertaining to the charter school, the EMO, and any related entities; and

(4) The charter school is in compliance with applicable Federal and State laws and regulations governing conflicts of interest, and there are no actual or perceived conflicts of interest between the charter school and the management organization.

(c) Each SE or CMO that has provided CSP funding to a charter school, and each charter school receiving CSP funding, must provide an assurance that it will post on its website, on an annual basis, a copy of any management contract between the charter school and a for-profit management organization, including a non-profit CMO operated by or on behalf of a for-profit entity, and report information on such contract to the Department (or, in the case of a charter school that receives CSP funding through an SE Grant, to the SE), including--

(1) The name and contact information of the management organization;

(2) A detailed description of the terms of the contract, including the cost and percentage such cost represents of the charter school's total funding, amount of CSP funds proposed to be used towards such cost (with an explanation of why such cost is reasonable), duration, roles and responsibilities of the management organization, and the steps the charter school is taking to ensure that it makes all programmatic decisions, maintains control over all CSP funds, and directly administers or supervises the

administration of the grant or subgrant in accordance with 34 CFR 75.701 and 76.701;

(3) A description of any business or financial relationship between the charter school developer or CMO and the management organization, including payments, contract terms, and any property owned, operated, or controlled by the management organization or related individuals or entities to be used by the charter school;

(4) The names and contact information of members of the boards of directors of the charter school;

(5) A list of all individuals who have a financial interest in the management organization, including descriptions of any affiliations or conflicts of interest for charter school staff, board members, and management organization staff, and a list of all related individuals or entities providing contractual services to the charter school and the nature of those services;

(6) A detailed description of any actual or perceived conflicts of interest, the steps the charter school took or will take to avoid any actual or perceived conflicts of interest, and how the charter school resolved or will resolve any actual or perceived conflicts of interest to ensure compliance with 2 CFR 200.318(c); and

(7) A description of how the charter school ensured that such contract is severable and that a change in management companies will not cause the proposed charter

school to close.

(d) Each charter school receiving CSP funding must provide an assurance that it will disclose, as part of the enrollment process, any policies or requirements (e.g., purchasing and wearing specific uniforms and other fees, or requirements for family participation), and any services that are or are not provided, that could impact a family's ability to enroll or remain enrolled (e.g., transportation services or participation in the National School Lunch Program).

(e) Each applicant for a CMO Grant, Developer Grant, or subgrant under the SE Grant program, without regard to whether there are any desegregation efforts in the public school districts in the surrounding area, must provide an assurance that it (or, in the case of an applicant for a CMO Grant, each charter school it proposes to fund) will hold or participate in a public hearing in the school districts or communities in which the proposed charter school will be located to obtain information and feedback regarding the potential impact of the charter school, including the steps the charter school has taken or will take to ensure that the proposed charter school would not hamper, delay, or in any manner negatively affect any desegregation efforts in the public school districts from which students are, or would be, drawn to attend the charter school, including efforts to comply with a court

order, statutory obligation, or voluntary efforts to create and maintain desegregated public schools, and that it would not otherwise increase racial or socio-economic segregation or isolation in the schools from which the students are, or would be, drawn to attend the charter school. Applicants must ensure that the hearing (and notice thereof) is accessible to individuals with disabilities and limited English proficient individuals as required by law, actively solicit participation in the hearing (i.e., provide widespread and timely notice of the hearing), make good faith efforts to accommodate as many people as possible (e.g., hold the hearing at a convenient time for families and provide virtual participation options), and submit a summary of the comments received as part of the application.

(f) Each applicant for an SE Grant or subgrant, CMO Grant, or Developer Grant must provide an assurance that it will not use or provide implementation funds for a charter school until after the charter school has received a charter from an authorized public chartering agency and has a contract, lease, mortgage, or other documentation indicating that it has a facility in which to operate.

Proposed Assurances Applicable to CSP SE Grants and CMO Grants:

Each applicant must provide an assurance that, within 30 days of the date of the grant award notification (GAN),

or the date of the subgrant award notification for SE Grants, the grantee or subgrantee will post on its website a list of the charter schools slated to receive CSP funds, including the following for each school:

- (a) The name, address, and grades served.
- (b) A description of the educational model.
- (c) If the charter school has contracted with a for-profit management organization, the name of the management organization, the amount of CSP funding the management organization will receive from the school, and a description of the services to be provided.
- (d) The grant or subgrant award amount, including any funding that has been approved for the current year and any additional years of the CSP grant for which the school will receive support.
- (e) The grant or subgrant application (redacted as necessary).
- (f) The peer review materials, including reviewer comments and scores (redacted as necessary) from the grant or subgrant competition.

PROPOSED DEFINITIONS:

In addition to the definitions in section 4310 of the ESEA, the CMO NFP, and the Developer NFP, we propose the following definitions for CSP SE Grants, CMO Grants, and Developer Grants. We may apply one or more of these definitions in any year in which a competition for new

awards is held under one of these programs.

Background: In order to ensure a common understanding of the proposed priorities and requirements, we propose definitions that are critical to the policies and statutory purposes of the CSP SE Grant, Developer Grant, and CMO Grant programs, including proposed definitions for “disconnected youth,” “educator,” and “underserved student” that are based on definitions of those terms from the Secretary’s Supplemental Priorities published in the *Federal Register* on December 10, 2021 (86 FR 70612). We propose these definitions to clarify expectations for eligible entities applying for SE Grants, Developer Grants, and CMO Grants, and to ensure that the review process for applications for such grants is as transparent as possible.

Proposed Definitions Applicable to SE Grants, CMO Grants, and Developer Grants:

Community assets means resources that can be identified and mobilized to improve conditions in the charter school and community. These assets may include--

- (1) Human assets, including capacities, skills, knowledge base, and abilities of individuals within a community;
- (2) Social assets, including networks, organizations, businesses, and institutions that exist among and within groups and communities; and
- (3) Political assets, such as a group’s ability to

influence the distribution of resources, financial and otherwise.

Disconnected youth means an individual, between the ages 14 and 24, who may be from a low-income background, experiences homelessness, is in foster care, is involved in the justice system, or is not working or not enrolled in (or at risk of dropping out of) an educational institution.

Educator means an individual who is an early learning educator, teacher, principal or other school leader, specialized instructional support personnel (e.g., school psychologist, counselor, school social worker, early intervention service personnel), paraprofessional, or faculty.

Underserved student means a student in one or more of the following subgroups:

(a) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(b) A student of color.

(c) A student who is a member of a federally recognized Indian Tribe.

(d) An English learner (as defined in section 8101 of the ESEA).

(e) A child or student with a disability (as defined in section 8101 of the ESEA).

(f) A disconnected youth.



(g) A migrant student.

(h) A student experiencing homelessness or housing insecurity.

(i) A student who is in foster care.

(j) A pregnant, parenting, or caregiving student.

(k) A student impacted by the justice system, including a formerly incarcerated student.

(l) A student performing significantly below grade level.

Proposed Definition Applicable to SE Grants:

Background: In addition to the proposed definitions for SE Grants, CMO Grants, and Developer Grants, we propose the following definition for CSP SE Grants only. We may apply this definition in any year in which a competition for new awards is held under the SE Grant program.

We are proposing to adopt the definition of “educationally disadvantaged student” established in the CMO NFP and Developer NFP for use in the CSP SE Grants program. The proposed definition for “educationally disadvantaged student” is based on section 1115(c)(2) of the ESEA.

Proposed Definition:

Educationally disadvantaged student means a student in one or more of the categories described in section 1115(c)(2) of the ESEA, which include children who are economically disadvantaged, children with disabilities, migrant students, English learners, neglected or delinquent students, homeless students, and students who are in foster care.

PROPOSED SELECTION CRITERIA:

Background: We propose selection criteria that align with the proposed requirements and assurances, identify for peer reviewers the factors considered to be essential to conducting a high-quality peer review, and are designed to aid in identifying the applicants most likely to succeed with implementing high-quality charter schools that are driven by the needs of families and their communities. These selection criteria would be used in addition to selection criteria in sections 4303(g)(1) and 4305(b)(4) of the ESEA, the CMO NFP, the Developer NFP, and 34 CFR 75.210, as appropriate. We may apply one or more of these proposed selection criteria to applicable grant competitions in fiscal year (FY) 2022 and later years. In the notices inviting applications we will announce the maximum possible points assigned to each criterion.

Proposed Selection Criteria for CMO Grants and Developer Grants:

- (a) Quality of the Community Impact Analysis. The

Secretary considers the quality of the community impact analysis for the proposed project. In determining the quality of the community impact analysis, the Secretary considers one or more of the following factors:

(1) The extent to which the community impact analysis demonstrates that the proposed charter school will address the needs of all students and families in the community, including underserved students; will ensure equitable access to diverse learning opportunities; and will not otherwise increase racial or socio-economic segregation or isolation in the schools from which the students are, or would be, drawn to attend the charter school.

(2) The extent to which the community impact analysis demonstrates that the proposed charter school has considered and mitigated, whenever possible, potential barriers to application, enrollment, and retention of students and families from diverse backgrounds.

(3) The extent to which the proposed charter school is supported by families and the community, including the extent to which parents and other members of the community were engaged in determining the need and vision for the school and will continue to be engaged on an ongoing basis in school decision-making, including the academic, financial, organizational, and operational performance of the charter school.

(b) Quality of the Charter School's Management Plan.

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan, the Secretary considers one or more of the following factors:

(1) The adequacy of the applicant's plan to maintain control over all CSP grant funds.

(2) The adequacy of the applicant's plan to make all programmatic decisions.

(3) The adequacy of the applicant's plan to administer or supervise the administration of the grant and maintain significant management or oversight responsibilities over the grant.

Proposed Selection Criterion for SE Grants:

(a) Quality of the Project Design. The Secretary considers the quality of the project design for the proposed project. In determining the quality of the project design for the proposed project, the Secretary considers the quality of the SE's process for awarding subgrants, including--

(1) The extent to which the number of subgrant awards anticipated for each grant project year is supported by evidence of demand and need; and

(2) The extent to which the proposed average subgrant award amount is supported by evidence of the need of applicants.

Final Priorities, Requirements, Definitions, and Selection

### Criteria:

We will announce the final priorities, requirements, definitions, and selection criteria in a document in the *Federal Register*. We will determine the final priorities, requirements, definitions, and selection criteria after considering responses to this document and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does not solicit applications. In any year in which we choose to use one or more of these proposed priorities, requirements, definitions, and selection criteria, we invite applications through a notice in the *Federal Register*.

### Executive Orders 12866 and 13563

#### Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the

economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these proposed priorities,

requirements, definitions, and selection criteria only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

We believe that the benefits of this regulatory action outweigh any associated costs, which we believe would generally be minimal. While this action would impose cost-bearing application requirements on participating SE Grant, Developer Grant, and CMO Grant applicants and on SE subgrant applicants, we expect that applicants would include requests for funds to cover such costs in their proposed project budgets. We believe this regulatory



action would strengthen accountability for the use of Federal funds by helping to ensure that CSP grants and subgrants are awarded to the entities that are most capable of expanding the number of high-quality charter schools available to our Nation's students.

We estimate costs associated with information collection requirements in the Paperwork Reduction Act section of this document.

#### Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

The proposed application requirements and selection criteria relating to a community impact analysis, management contracts, and management plans contain information collection requirements. The Department is requesting paperwork clearance on the OMB 1810-NEW data

collection associated with these proposed application requirements and selection criteria. That request will account for all burden hours and costs discussed within this section. Under the PRA, the Department has submitted these requirements to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the notice of final priorities, requirements, definitions, and selection criteria we will display the control numbers assigned by OMB to any information collection requirements proposed in this NPP and adopted in the notice of final priorities, requirements, definitions, and selection criteria.

For the years that the Department holds SE Grant, CMO Grant, and Developer Grant competitions and that SEs hold subgrant competitions, we estimate that 365 applicants will apply and submit an application. We estimate that it will take each applicant 60 hours to complete and submit the application, including time for reviewing instructions,

searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total burden hour estimate for this collection is 21,900 hours. At \$97.28 per hour (using mean wages for Education and Childcare Administrators<sup>13</sup> and assuming the total cost of labor, including benefits and overhead, is equal to 200 percent of the mean wage rate), the total estimated cost for 365 applicants to complete a SE grant application, CMO grant application, Developer grant application, or SE subgrant application is approximately \$2,130,432.

Consistent with 5 CFR 1320.8(d), the Department is soliciting comments on the information collection through this document. Between 30 and 60 days after publication of this document in the *Federal Register*, OMB is required to make a decision concerning the collections of information contained in these proposed priorities, requirements, definitions, and selection criteria. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments on these Information Collection Requests by [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments related to the information collection requirements for these proposed priorities, requirements, definitions, and selection criteria must be submitted electronically

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<sup>13</sup> See [www.bls.gov/oes/current/oes\\_nat.htm](http://www.bls.gov/oes/current/oes_nat.htm).

through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) by selecting the Docket ID number ED-2022-OESE-0006 or via postal mail, commercial delivery, or hand delivery by referencing the docket ID number and the title of the information collection request at the top of your comment. Comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave, SW, LBJ, Room 6W208D, Washington, D.C. 20202-8240.

Note: The Office of Information and Regulatory Affairs in OMB and the Department review all comments related to the information collections requirements posted at [www.regulations.gov](http://www.regulations.gov).

Collection of Information

Information Collection Activity	Estimated Number of Responses	Hours Per Response	Total Estimated Burden Hours	Estimated Cost at an Hourly Rate of \$97.28
Application	365	60	21,900	\$2,130,432

We consider your comments on these proposed collections of information in--

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;

- Enhancing the quality, usefulness, and clarity of the information we collect; and

- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Regulatory Flexibility Act Certification:

The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below \$7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

The small entities that this proposed regulatory action would affect are charter schools, including charter schools that operate as LEAs under State law; and public or private nonprofit organizations. We believe that the costs imposed on an applicant by the proposed priorities, requirements, definitions, and selection criteria would be limited to paperwork burden related to preparing an

application and that the benefits of these proposed priorities, requirements, definitions, and selection criteria would outweigh any costs incurred by the applicant.

Participation in the CSP is voluntary. For this reason, the proposed priorities, requirements, definitions, and selection criteria would impose no burden on small entities unless they applied for funding under the program. We expect that in determining whether to apply for CSP funds, an eligible entity would evaluate the requirements of preparing an application and any associated costs and weigh them against the benefits likely to be achieved by receiving CSP grant. An eligible entity will probably apply only if it determines that the likely benefits exceed the costs of preparing an application.

The proposed priorities, requirements, definitions, and selection criteria would impose some additional burden on a small entity applying for a grant relative to the burden the entity would face in the absence of the proposed action.

This proposed regulatory action would not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program. We invite comments from small entities as to whether they believe this proposed regulatory action would have a

significant economic impact on them and, if so, request evidence to support that belief.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: On request to the program contact person listed under FOR FURTHER INFORMATION CONTACT, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or another accessible format.

Electronic Access to This Document: The official version of this document is the document published in the *Federal Register*. You may access the official edition of the *Federal Register* and the Code of Federal Regulations at [www.govinfo.gov](http://www.govinfo.gov). At this site you can view this document, as well as all other documents of this Department published in the *Federal Register*, in text or Portable Document

Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the *Federal Register* by using the article search feature at [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

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Ruth E. Ryder  
Deputy Assistant Secretary for  
Policy and Programs  
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